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SIPDIS

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TAGS: [ELAB](#) [SENV](#) [ETRD](#) [GT](#)

SUBJECT: CAFTA LABOR/ENVIRONMENT INFORMATION REQUEST

REF: STATE 283733

¶1. This message is in response to RefTel request for information on legal remedies or actions the GOG can take to address violations of or non-compliance with labor and/or environmental laws.

¶2. Labor

-- Violations of labor law are generally brought to the attention of authorities (the Labor Ministry and Labor Courts) by complaints from workers and through labor inspections.

-- The Labor Ministry and Labor Courts may each attempt to facilitate the amicable resolution of conflict. If no voluntary "acta" (compliance agreement) is agreed to between the employer and worker, aggrieved parties may seek justice in the Labor Courts. Labor Court decisions may be appealed to the Supreme Court, and, if a constitutional principle is involved, to the Constitutional Court.

-- Labor Code reforms passed in May 2001 also permit the Labor Ministry to cite and fine employers for infractions of standards relating to working conditions, minimum wage rates, maximum hours, permit requirements, safety and health standards, working age, and the rights to organize and bargain collectively.

-- Employers have the right to appeal fines over 5000 quetzals (approx. \$625) to the labor courts.

-- Between the enactment of new labor reforms in May, 2001 and September 17, 2003, the Labor Ministry reported imposing 1,326,622 quetzals (\$165,827) in fines on employers for labor violations.

-- The GOG (Ministry of Economy, in consultation with the Labor Ministry) also requires respect for labor rights as a condition on employers granted tax exemption privileges to for-export clothing manufacturers ("maquilas").

-- The GOG has cited 54 companies in the maquila sector for labor violations, and threatened to withdraw tax exemption privileges if these companies do not address outstanding labor violations by a GOG-imposed deadline. Two such cases resulted in negotiation of collective bargaining agreements.

-- The Executive submitted a package of reforms to the Labor Code in May, 2003, which, if passed by Congress, would allow plaintiffs to request that the labor court judge embargo the assets of the employer or representatives of the named company at the outset of a labor court proceeding. Critics argue that the measure is too sweeping and could force firms to shut down before a case has been tried.

¶3. Environment

The GOG has provisions in its environmental law (1986) for stopping an activity which would pollute, for seizing objects that would pollute or assist in polluting, for modifying or demolishing structures that violate resolutions governing the environment, for levying fines that correlate to the offense, and for whatever else would be necessary to prevent or correct damage to the environment.

The Ministry of Environment investigates complaints. It has the authority to levy fines on site of from 5 to 100,000 quetzals (\$0.60-12,500). However, usually it investigates the complaint and then calls in the implicated company. Together they write up a resolution ("acta") which is equivalent to a compliance agreement in the U.S. If the "acta" is not fulfilled, the Ministry can try for legal redress through the Public Ministry (MP) via the following articles of the Penal Code:

Article 346- Illegal exploitation of natural resources. A person who would exploit mineral resources, construction materials, rocks and natural resources contained within territorial oceans, underwater areas, rivers and lakes without having a license or authorization from appropriate environmental authorities (or who exceed approved license limits) will be sanctioned with a 2-5 year sentence. If this crime were committed by employees or legal representatives of

a company or a legal entity, the company will be sanctioned with a fine of 5,000-25,000 quetzals (\$625-4,125). If a company is a second offender, it will be permanently shut down.

Article 347 A- Pollution: 1-2 year sentences and fines of 300-5,000 quetzals (\$48-625) for air, ground, or water pollution through toxic emanations, excessive noise or waste disposal that could harm people, animals, forest and plantations.

Article 347 B- Industrial pollution: 2-10 year sentences and fines of 3,000-10,000 quetzals (\$475-1,250) to directors, managers, principals or beneficiaries of an industrial facility or commercial activity that would allow or approve air, ground, water pollution through toxic emanations, excessive noises.

No standards or parameters exist for what constitutes, e.g., toxic emanations, excessive noise or waste disposal that could harm people, animals, forests and plantations. The Ministry of Environment tells us it has neither the equipment nor the training nor the staff to set standards and evaluate information which would determine the magnitude of damage to the environment.

The GOG also has other laws which cover environment, specifically, forestry (1996) and fishing (2003).

According to the Ministry of Environment, it dealt with, verified and/or resolved 672 complaints in 2002 and 795 in 2003.

14. Amparo (Injunction)

Guatemalan law (specifically the "ley de amparo") protects persons against the threat of violation of rights or restores rights if violated. There is no area of law in which "amparo" (injunction) protection does not apply (i.e. including labor and environmental regulation). Amparos can be temporary or permanent, and have the force of law. Amparos can be requested against court decisions, or can be filed against government or private entities (e.g. requested by a union or environmental organization against a private company).

HAMILTON